

STATE OF INDIANA) ST. JOSEPH COUNTY SUPERIOR COURT
) SS: 71D05-1903-PL-000074
COUNTY OF MARION) CAUSE NO. _____

JANICE CERVELLI,)
)
Plaintiff,)
)
v.)
)
THE CORPORATION OF ST.)
MARY'S COLLEGE, NOTRE DAME,)
)
Defendant.)

PLAINTIFF'S COMPLAINT FOR DAMAGES

The Plaintiff, Janice Cervelli, by counsel, for her Complaint for Damages against the Defendant, the Corporation of St. Mary's College, Notre Dame, states as follows:

PARTIES

1. At all times mentioned herein, the Plaintiff, Janice Cervelli ("Cervelli") was a resident of St. Joseph County, Indiana.
2. At all times mentioned herein, the Corporation of St. Mary's College, Notre Dame ("SMC"), was and is a domestic nonprofit corporation formed in the State of Indiana with its principal place of business in St. Joseph County, Indiana.

BACKGROUND AND FACTUAL ALLEGATIONS

3. On February 17, 2016, Cervelli entered into a confidential Employment Agreement with the defendant SMC, pursuant to which she agreed to serve as President of SMC. (A true and accurate copy of the Employment Agreement is

attached to the Verified Written Request to Prohibit Public Access as Ex. 1, filed contemporaneously with this Complaint).

4. Subject to certain termination provisions, the term of Cervelli's employment as President was to commence June 1, 2016 and continue through May 31, 2021.

5. Under Section 4 of the Employment Agreement, Cervelli's employment could be terminated "for cause," "without cause," or by resignation.

6. SMC has not terminated Cervelli's employment "for cause," nor has there ever been any grounds to do so.

7. Section 5 of the Employment Agreement provided for annual reviews of Cervelli's performance by the Chair and Vice-Chair and the Full Board Trustees of SMC. Cervelli had reviews in 2017 and 2018, both of which were favorable.

8. Nevertheless, despite these two favorable reviews and despite a lack of any reason to terminate her for cause, in late September 2018, SMC Board of Trustee Chair Mary Burke asked Cervelli to resign from her position as President.

9. On or about September 30, Burke presented Cervelli with an undated and unsigned separation agreement and stated that the Board was calling for her immediate resignation pursuant to the terms of the proposed agreement. The representation that the Board was interested in terminating Cervelli was not true, or at least not two-thirds of the full Board as required.

10. Burke demanded that Cervelli review and accept the agreement by October 5, when she would announce Cervelli's resignation at a Faculty Assembly Meeting and College Assembly or the Board would terminate her without cause.

11. At the September 30 meeting, Burke instructed Cervelli not to report to work and to tell everyone that she was on sick leave, which was not true. Burke also suggested that Cervelli indicate that she was resigning because her mother needed more care, which was also not true. Cervelli was also told to resign her position as a full tenured professor without cause and without compensation.

12. On October 8, 2018, the Notre Dame and SMC student newspaper ("The Observer") quoted Chair Burke as follows,

However, Burke did address several rumors regarding Cervelli's resignation. *Burke said it was solely Cervelli's decision and not the result of internal pressure to resign.* "There's probably lots of different pieces to it," Burke said. "So, it was her decision, *her decision alone to resign*, and we respect her privacy as to why the reasons were." Burke said while she cannot say with certainty Cervelli did not leave due to health reasons, she appears to be in "good health." "I've spoken with her, she sounds in good health, she says she's in good health, but who knows why?" Burke said. "There's probably a thousand reasons to pull together, and I think we have to respect her privacy on it as well."

13. Similarly, the South Bend Tribune reported on October 9 that Burke said that Cervelli had resigned "*due to reasons she chose not to disclose*" and that "*the board had no issues with Cervelli's performance and didn't influence her decision.*" That is not true.

14. Burke also told the Tribune that "*It came as a surprise*" when "*Cervelli called her last week to convey the news.*" The Tribune further reported that Burke

said she “*asked Cervelli if ‘there was something we could do’ to keep her at the college but her decision to resign was firm.*” Such a phone call never occurred.

15. The truth is, the *only reason* that Cervelli resigned was pressure from Burke (and apparently the other Board members who were in cahoots with her).

16. Cervelli did not resign for health reasons or any other personal reasons. Cervelli loved her job at SMC, she did it well,¹ and she would have preferred to continue as President of SMC.

17. On or about November 15, 2018, Cervelli and SMC entered into a confidential agreement, in which Cervelli resigned from her position as President of SMC effective December 31, 2018. (A true and accurate copy of the resignation agreement is attached to the Verified Written Request to Prohibit Public Access as Ex. 2. (“Settlement Agreement”).

18. As stated in the Settlement Agreement, Cervelli indicated a willingness to resign her position as President “in lieu of a not for cause termination and in return for the consideration set forth in [the] Agreement....”

19. Pursuant to Section 3 of the Agreement, the parties agreed that as of January 1, 2019, Cervelli would “continue her position as a tenured member of the faculty and she shall be paid in accordance with Section 11 of the Employment Agreement.” (Section 3).

¹ For example, in the same Observer article cited above, it also stated that Burke said that “[Cervelli brought in a really good class this year...You know, 406 [students] is a really good entering class. So the budget’s in good shape. Financially, we are in strong shape.” Burke also reportedly stated, “There were no milestones that were not met by President Cervelli.”

20. Section 11 of the Employment Agreement states that she would be paid “in an amount equal to the highest paid professor at Saint Mary’s.”

21. On October 2, 2018, SMC’s Director of Human Resources sent an email to Ms. Cervelli with a “breakdown of the highest and lowest paid Professors by Rank” (hereinafter referred to as the “October 2nd Email”). In entering into the Settlement Agreement, Cervelli relied on the reported salary of the highest paid professor.

22. In the Settlement Agreement, SMC also agreed to pay Cervelli certain severance pay and benefits for twelve months, beginning January 1, 2019.

23. Specifically, on or about February 1, 2019 and March 1, 2019, Ms. Cervelli should have been paid monthly gross wages in the same amount paid to the highest paid professor (as reflected in the October 2nd Email) as her wages for the months of January and February 2019, respectively.

24. SMC has not paid Ms. Cervelli her salary for her services as a tenured member of the faculty for those months.

25. In addition, SMC has refused to recognize Cervelli’s status as a tenured faculty member.

26. SMC has conducted searches and hires of visiting and junior faculty in Art and Environmental Studies, superseding its obligation to Cervelli as a sitting tenured Full Professor.

27. SMC has obstructed Cervelli’s ability to fulfill her responsibilities as a faculty member and to prepare and receive guidance on course development, course proposals, and other academic policy by:

- a. Failing to identify faculty assignments for Cervelli in teaching, research, or service.
- b. Failing to provide her with an office.
- c. Banning Cervelli's attendance at Faculty Development Day, Department of Art Faculty Meetings, and any other meetings of the college, accompanied by threats of action if disregarded.
- d. Canceling and postponing meetings with the Department Chair of Art and Environmental Studies Program to review course proposal and Disciplinary Standing materials prior to stated deadlines and limiting her ability to respond to requirements.
- e. Requiring all Cervelli correspondence to go through Interim-Provost, causing unnecessary delay and additional work.
- f. Excluding her from the College faculty roster.
- g. Removing Cervelli from the FAC-STAFF list serve of the college, thus banning her from receiving emails containing important announcements regarding college policies, events, and faculty development opportunities.
- h. Blocking Cervelli from Faculty link and Registrar page of the SMC intranet portal, and thus access to essential information on academic policy and faculty support services.
- i. Directing SMC staff (HR Director and CIO) not to respond to Cervelli's repeated requests for meetings, information, and support to which she is entitled as an employee and tenured faculty member.
- j. Monitoring of Cervelli's movements and statements on campus.

COUNT I DECLARATION OF RIGHTS AND INJUNCTION

28. Cervelli incorporates by reference each and every one of the paragraphs above.

29. While Section 7 of the Settlement Agreement contained a covenant not to sue, claims for breach of the Settlement Agreement and claims arising after the

effective date of the Settlement Agreement were specifically excepted from the covenant not to sue.

30. A justiciable controversy has arisen between Ms. Cervelli and St. Mary's regarding their rights and obligations under the Settlement Agreement between them, including a) Ms. Cervelli's status as a tenured faculty member; b) Ms. Cervelli's right to receive compensation and employment benefits as a tenured faculty member; c) Ms. Cervelli's right to reinstatement to the faculty; and d) Ms. Cervelli's right to continuing severance payments under the Settlement Agreement:

31. Ms. Cervelli requests a "speedy hearing" on the declaration of rights and obligations, which the Court may grant under Ind. Trial Rule 57.

32. Ms. Cervelli seeks a declaration that:

- She is entitled to tenure, all compensation and employment benefits (including accrued leave) as a tenured faculty member;
- She is entitled to an injunction reinstating her to the St. Mary's faculty and continued employment until her resignation or retirement;
- She is entitled to all unpaid compensation and employment benefits and prejudgment interest from the date of St. Mary's breach of contract.
- She is entitled to continued severance payments under the Settlement Agreement.
- She will receive such other just relief as determined by the Court.

COUNT II – BREACH OF CONTRACT

33. Cervelli incorporates by reference each and every one of the paragraphs above.

34. SMC has breached the Settlement Agreement by failing to pay Cervelli the amount of money she was entitled to be paid as a tenured member of the faculty for the months of January and February 2019.

35. In addition, SMC has breached the Settlement Agreement by refusing to recognize Cervelli's status as a tenured faculty member as outlined above.

COUNT III BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

36. Cervelli incorporates by reference each and every one of the paragraphs above.

37. There is a legal duty implied in the Employment Agreement and the Settlement Agreement that the employer (SMC) will act in good faith with its employee (Cervelli).

38. SMC has breached its duty of good faith and fair dealing in refusing to pay Cervelli her salary as a tenured professor, refusing to recognize Cervelli's status as a tenured faculty member, and in obstructing Cervelli's ability to fulfill her responsibilities as a tenured faculty member as outlined above.

39. In addition, SMC has breached its duty of good faith in attempting to prevent Ms. Cervelli from disclosing that she is a tenured member of the faculty and by trying to shield this fact from the community and the public.

40. SMC has attempted to use the confidentiality agreement as a sword to prevent Cervelli from telling others that she is a tenured full professor and faculty member. As a result, the students, faculty, and other members of the Saint Mary's College community are confused and left in the dark about Cervelli's status.

41. SMC has also effectively prevented Cervelli from correcting the prior misrepresentations made by Chair Burke to the public.

42. As a result of SMC's breach, Cervelli has suffered both economic and emotional harm. She has effectively lost her job at SMC as well as her livelihood. She has also suffered emotional distress.

**COUNT IV – VIOLATION OF INDIANA'S WAGE PAYMENT STATUTE
[I.C. § 22-2-5-1 AND I.C. § 22-2-5-2]**

43. Cervelli incorporates by reference each and every of the paragraphs above.

44. The amounts that Cervelli was entitled to be paid as a tenured member of the faculty, but which have never been paid, as described above, constitute unpaid "wages" and "an amount due" to her from SMC as those terms are used in I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

45. On January 31, 2019, Cervelli's counsel sent a certified letter to SMC demanding payment of Cervelli's unpaid wages.

46. To date, SMC has not paid Cervelli the unpaid wages to which she is entitled, including wages for the months of January and February at the amount equivalent to that paid to the highest paid professor.

47. SMC has not acted in good faith in refusing to pay the wages owed to Cervelli. SMC has no reasonable basis to deny her the amounts owed.

48. By failing to pay Cervelli the correct sums to which she was rightfully entitled to be compensated for the work that she performed for SMC during January

and February within ten (10) days of the letter demanding payment of same, the Defendant SMC has violated I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Janice Cervelli prays for a judgment against SMC including:

1. Reinstatement to the position of tenured professor (with all the rights and privileges of that position) until resignation or retirement or, in the alternative, an amount sufficient to compensate her for buying out her tenure;
2. An award of economic and compensatory damages, prejudgment interest, and costs;
3. With respect to Count IV, an amount equal to the amount of unpaid wages, plus an additional 10% of these amounts for each day that these amounts remain unpaid, not to exceed a total of double the amount that is due and owing to her; for the costs of this action; for reasonable attorney fees; for all other reasonable costs of collection;
4. A declaration of Ms. Cervelli's rights and SMC's obligations.
5. All other just and proper relief in the premises.

JURY DEMAND

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

/s/ Carol Nemeth Joven

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ATTORNEYS FOR PLAINTIFFS

71D05-1903-PL-00007

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of February 17, 2016, by and between THE CORPORATION OF SAINT MARY'S COLLEGE NOTRE DAME ("Saint Mary's"), and JANICE CERVELLI (the "President").

WHEREAS, the Board of Trustees of Saint Mary's (the "Board") has selected Janice Cervelli to serve as President of Saint Mary's;

WHEREAS, Janice Cervelli desires to accept employment with Saint Mary's as its President; and

WHEREAS, this Agreement has been duly approved and its execution duly authorized by the Board;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the actions taken pursuant thereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Saint Mary's and Ms. Cervelli agree as follows:

1. Employment as President. Pursuant to the terms and conditions of this Agreement, Saint Mary's agrees to employ Janice Cervelli as its President, and Ms. Cervelli agrees to be employed by Saint Mary's as President of Saint Mary's, during the Term of Employment specified in Section 2. President understands that she serves subject to the direction of the Board. President further understands that not all rules and policies applicable to her employment are contained in this Agreement and understands and agrees to abide by any other rules and policies that Saint Mary's currently has or may reasonably adopt or amend from time to time during President's employment with Saint Mary's to the extent that the rules or policies do not conflict with specific provisions of this Agreement.

2. Term. Subject to termination as hereinafter provided in Section 4, the term of President's employment hereunder shall commence on June 1, 2016, and shall continue in force through May 31, 2021 (such period being hereinafter referred to as the "Term of Employment").

3. Duties.

(a) Description. President agrees to be responsible for and to perform all the duties normally performed by the president of a college, including, but not limited to, the following:

(1) All duties and responsibilities of the President of Saint Mary's as set forth in the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of Saint Mary's and as established in the policies, procedures, and position descriptions currently existing, or hereinafter reasonably adopted by the Board to the extent they do not conflict with the provisions of this Agreement;

(2) All duties and responsibilities of the President of Saint Mary's generally imposed by (1) the laws of the State of Indiana and (2) the laws, rules, regulations, and canons of the Roman Catholic Church which are applicable to Roman Catholic institutions of higher education. Saint Mary's shall provide President with the services of a Canon lawyer to the extent advice with respect to Canon law is needed;

(3) All duties and responsibilities generally associated with service as Chief Executive Officer of an institution of higher education; and

(4) Such other duties and responsibilities as, from time to time, may now or hereafter be reasonably assigned to the President by the Board to the extent they do not conflict with the provisions of this Agreement.

(b) Faithful Discharge. President agrees that during her Term of Employment as President, she will devote her time to the faithful discharge of the duties of such office.

(c) Other Requirements. Saint Mary's has heretofore provided to President, and President agrees to become familiar with and comply with the employee handbook of Saint Mary's.

4. Termination.

(a) Termination For Cause. President may be discharged for Cause, and this Agreement terminated at any time (during the Term of Employment). For purposes of this Agreement, "Cause" shall mean conduct by President determined by the Board to be (1) the conviction or plea of *nolo contendere* or guilty of a felony; (2) commission of an offense that involves moral turpitude and is a crime under federal, state or local laws; (3) gross negligence or willful malfeasance by President in the performance of her duties that materially harms Saint Mary's; (4) misconduct of

such an egregious nature that it portrays Saint Mary's in a materially unfavorable light, and (5) a material breach of this Agreement by President or President's material failure to perform her duties and obligations to Saint Mary's or to abide by the reasonable policies and regulations established by the Board from time to time, which breach or failure continues for ten (10) business days or more after written notice of such breach or failure is provided by Saint Mary's to President. In the event this Agreement is terminated for Cause under the provisions of this Section 4(a), only accrued salary and vacation benefits to the date of termination shall be paid to President.

(b) Termination Without Cause. Should Saint Mary's discharge President during the Term of Employment without cause, Saint Mary's shall pay severance to President by continuing monthly salary payments to President at the salary rate then in effect, less all applicable withholdings, for one year following her termination (the "Severance Period"). During the Severance Period, Saint Mary's also will pay President an amount equal to the contributions that Saint Mary's would have made on behalf of President pursuant to Saint Mary's TIAA/CREF retirement plan (with such amount being based upon the amount of the payments made to President under this Section 4(b)). Such payments shall be made at the same time as the monthly salary payments to President during the Severance Period. In addition, during the Severance Period, President shall also be entitled to participate in such medical and disability insurance plans of Saint Mary's upon the same or comparable terms as other employees of Saint Mary's, subject to all eligibility requirements, in the same manner and with the same contributions to cost by Saint Mary's, as she would be entitled to if no discharge had occurred.

(c) Resignation By President. President may resign from her employment upon providing ninety (90) days' notice to Saint Mary's. Should President resign her employment during the Term of Employment, Saint Mary's shall have no further obligations under this Agreement beyond payment of wages and vacation benefits, if any, earned as of the effective date of resignation.

5. Evaluation of the President During Term of Employment. The Chair and Vice-Chair of the Board shall annually review the performance and compensation of President as provided in the Bylaws, within forty-five (45) days of the end of each fiscal year of Saint Mary's during the Term of Employment. Such review will be conducted after the Chair and Vice-Chair of the Board have sought the feedback of the entire Board regarding the President's performance for that year.

6. Compensation and Benefits During Term of Employment. Subject to the terms of this Agreement, Saint Mary's agrees that it will pay President as follows during the Term of Employment:

(a) Salary. President shall be paid an annual minimum salary of Three Hundred Five Thousand and no/100 Dollars (\$305,000.00) (the "Salary"). Such annual salary shall be paid to President in equal monthly installments (being President's monthly salary). President's salary shall be reviewed annually by the Board and President will be entitled to receive an annual increase in an amount equal to at least the incremental average salary percentage increases for Saint Mary's cabinet and President. However, no additional increase to President's Salary shall occur without approval of the Board, as required in the Bylaws. During the Term of Employment, President's annual Salary may be increased but not decreased.

(b) Vacation Leave. President shall receive four (4) weeks of vacation leave on an annual basis during the Term of Employment. In addition, prior to the beginning of the academic year in the fall of 2016, President shall be entitled to take two (2) additional weeks of vacation leave.

(c) Completion Bonus. In addition to her Salary as set forth above, President also may be entitled to receive a Completion Bonus in the amount of Ten Thousand and no/100 Dollars (\$10,000.00), less all normal and necessary withholding, upon her completion of the five-year term set forth in this Employment Agreement. President must complete the entire term of this agreement to qualify for this bonus.

(d) Additional Compensation. If President completes the term of employment set forth in this Agreement or if President becomes Permanently Disabled (as defined herein), she will also receive additional compensation, less all normal and necessary withholdings, in an amount equal to six (6) months of her then current annual salary. This Additional Compensation shall be paid to President throughout the six months following the date upon which the compensation is awarded her pursuant to Saint Mary's normal payday schedule. This amount shall be payable to President only if she is employed as President on the last date covered by this Agreement or if she is employed by Saint Mary's at the time of the declaration of her Permanent Disability. No amount of this additional compensation is to be paid or shall vest prior to the final day of the term of employment.

(e) Other Benefits. President shall be entitled to participate in such medical and disability insurance plans, retirement plans and other employee benefit plans and programs (including the TIAA/CREF retirement plan with employer match of your contributions) as are established by Saint Mary's from time to time upon the same or comparable terms as other employees of Saint Mary's, subject to all eligibility requirements. Any such benefits, plans and/or policies shall be subject to change or termination from time to time as determined by Saint Mary's. To the extent that federal or state law or the retirement plan itself limits the employer's ability to match salary in excess of applicable annual compensation and contribution limits, Saint

Mary's shall pay (as long as permissible under the retirement plan) additional compensation to President in the amount of the otherwise prohibited match within 60 days after the end of each calendar year.

In addition to, but not in limitation of, benefits otherwise available hereunder to President, Saint Mary's shall provide to President the following benefits during the Term of Employment:

(1) Saint Mary's shall provide President with an automobile allowance in the amount of \$750.00 per month paid to the President on or about the 15th day of each month, the personal use of which shall be reported as W-2 income from Saint Mary's to President for tax reporting purposes. On a semi-annual basis, President shall provide Saint Mary's with receipts and/or documentation to support the reasonableness of this automobile allowance.

(2) President may rent or purchase a residence in the South Bend area. In either event, Saint Mary's will provide President with (i) a monthly housing allowance of \$2,750, (ii) up to \$12,500 (such amount to mutually determined by President and Saint Mary's) for improvement to the first floor of such residence to allow use of such space in furtherance of the business and needs of Saint Mary's and as would be typical for the President of Saint Mary's, and (iii) up to \$5,000 (such amount to mutually determined by President and Saint Mary's) annually for decorating costs for such residence. In the event President chooses to buy a residence in the South Bend area, Saint Mary's shall pay the lesser of 5% of the purchase price or \$25,000 as the down payment on any residence purchased by President. St. Mary's shall also pay President such additional amounts as necessary to cover all state and federal tax liabilities arising out of the payments set forth in this paragraph (2).

On a semi-annual basis, President shall provide Saint Mary's with receipts and/or documentation to support the reasonableness of this housing allowance.

(3) Saint Mary's will maintain a membership in the College's name at The University Club of Chicago in Chicago, Illinois, or such similar club as is mutually agreeable to Saint Mary's and President, with such membership to be used by President in conducting business functions on behalf of Saint Mary's until the date of termination of the Term of Employment for any reason whatsoever.

(4) President shall secure three bids for moving and shall accept the lowest conforming bid. Saint Mary's will reimburse President for the reasonable moving expenses that are incurred by President in her relocation to the South Bend, Indiana, area in order to assume the position of President. Such reimbursement shall be made in a timely fashion by Saint Mary's upon its receipt from President of documents confirming the cost incurred. Saint Mary's will also reimburse President for reasonable storage costs incurred in connection with her move to South Bend.

(5) Saint Mary's will pay for trips by President to South Bend, as mutually agreed to by Saint Mary's and President, to find housing; make necessary arrangements for relocation and to assist in her transition into the President's position.

(6) In addition to President's personal furnishings for the home, Saint Mary's will provide a furniture allowance in a mutually agreeable amount.

(7) Saint Mary's shall purchase a term life insurance policy (or such other life insurance product as determined by the Board) on President in the amount of \$1 million, which policy shall be owned by President or President's beneficiaries.

(8) During the first year of the Term of Employment, Saint Mary's will pay for an executive coach for the President. Such coach will be selected by, and will serve for such period of time as mutually agreed to by, the President and the Board Chair.

(f) Saint Mary's will reimburse President for the cost of an annual executive medical examination of the President. President will provide verification of the cost of such examination in accordance with the reimbursement policies and practices of Saint Mary's. Said examination shall be conducted by a physician selected by President.

(g) Taxes and Other Withholdings. Saint Mary's will deduct and withhold from all amounts paid as compensation to President hereunder all necessary social security and withholding taxes and any other similar sums required by law.

7. Work Product During Term of Employment. Saint Mary's shall own, and shall have the right to publish or reuse, any oral, written, visual, audio, video, digital, or other materials created by President in the course of President's employment during the Term of Employment.

8. Honoraria, Endorsements, and Other Activities. Other than public appearances, speeches, endorsements, publications, employments, and other similar activities conducted by President which have been approved in advance by the Chair of the Board (the "Board Chair"), President may not participate in or receive compensation for outside activities of this nature, or engage in any fund-raising activities for any entity other than Saint Mary's, during the Term of Employment unless President first obtains the prior written approval from the Board Chair, which approval shall not be unreasonably withheld. President also shall seek and receive

prior written approval from the Board Chair before accepting membership on any boards of for-profit or nonprofit entities.

9. Disability. In the event of President's Permanent Disability during the Term of Employment, this Agreement shall terminate on the date of such Permanent Disability and Saint Mary's general policies regarding disability for full-time professional staff employees shall apply, provided, however, that President shall receive her full salary plus benefits during the first twelve (12) months of such disability or until Saint Mary's long-term disability payments become effective by contract, whichever is earlier (the "Short-Term Disability Period"). During the Short-Term Disability Period, Saint Mary's will continue contributions to President's TIAA/CREF retirement program.

For purposes of this Agreement, "Permanent Disability" or "Permanently Disabled" shall mean the inability of President to perform the essential functions of the job for a period of six (6) continuous months with a reasonable accommodation (as such term is defined in 42 U.S.C. § 12111(9), as amended, and in the common law interpreting same).

10. Death. In the event of President's death, this Agreement shall terminate immediately, and President's legal representative shall be entitled to receive compensation through the last day of the calendar month during which President died, plus any accrued vacation pay, insurance benefits, and any then-current credits and earnings of any deferred compensation plan.

11. Tenured Member of Faculty and Sabbatical. The Board will use its best efforts to secure appointment of President as a tenured member of the faculty of Saint Mary's or a full professor. Such tenure or professorship, if any, would be granted by the faculty of Saint Mary's in accordance with the customary policies and procedures of the faculty in granting tenure to a faculty member or awarding a full professorship. If Saint Mary's grants tenure or a

full professorship to President during the Term of Employment, Saint Mary's will recommend to the faculty that tenure or the full professorship be granted with retreat rights within President's area of teaching expertise (to the extent permitted by the customary policies and procedures of the Saint Mary's faculty), that is, if your employment as President is terminated President may retain a full-time teaching position in President's subject area to be paid in an amount equal to the highest paid professor at Saint Mary's. At the end of the Term of Employment, President shall be entitled to take a one-year sabbatical (the "Sabbatical") to prepare her for teaching and with such conditions as shall be mutually agreed upon by the Board and President. During the Sabbatical, President shall be entitled to receive such compensation as provided in the Agreement for successful completion of the Term of Employment, however, the terms of this Agreement shall not govern the employment relationship of President with Saint Mary's. All terms of employment of President during the Sabbatical shall be governed by the policies and procedures of Saint Mary's applicable to a tenured member of the faculty of Saint Mary's or a full professor.

12. Key Person Life Insurance Policy. Saint Mary's shall have the right, but not the duty, to apply for and carry life insurance on President, as a key employee ("Key Employee") of Saint Mary's, in such amount as the Board shall determine. President agrees to cooperate with all procedures and take all actions necessary for Saint Mary's to obtain such life insurance policy.

13. Indemnification. Saint Mary's shall indemnify President and hold her harmless against legal fees, expenses, judgments, and other financial amounts incurred while carrying out the duties of her office as President. President shall continue to be indemnified subsequent to termination of employment as President with respect to acts or omissions within the scope of her employment as President.

14. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from President's employment and/or termination of her employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator chosen by the parties in South Bend, Indiana. The costs and fees associated with the mediation shall be shared equally by the parties.

15. Arbitration. If mediation, as described in Section 14, is unsuccessful, any controversy between the Saint Mary's and President involving the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from President's employment and/or termination of her employment shall, on the written request of either party served on the other, be submitted to binding arbitration before a single arbitrator. The American Arbitration Association shall provide a list of three (3) arbitrators who are licensed to practice law in the State of Indiana. Within ten (10) days of receipt thereof, either party may reject the list of proposed arbitrators in whole and request a new list, or alternatively, each party shall strike one and so notify the AAA in confidence. After being notified of each strike, the AAA shall advise the parties of the remaining arbitrator, or if the parties strike the same person, then the AAA shall choose from the two remaining arbitrators, advising the parties only of the selected arbitrator. Saint Mary's and President stipulate and agree that any arbitration will be held in South Bend, Indiana, pursuant to the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association (or any comparable rules then in existence) (the "Rules"). Pursuant to the Rules, discovery may include depositions, interrogatories and document production. In any controversy

between the Saint Mary's and President involving the construction, application or enforcement of this Agreement, the arbitrator must base his/her decision upon the written contract and they shall not have power to modify, add to or ignore terms of the Agreement. The written decision of the arbitrator shall be final and conclusive upon both parties and may be entered in any court having jurisdiction thereof. The arbitrator's compensation and administrative fees shall be shared equally by the parties. The parties agree to pay their own attorney's fees and costs.

16. Confidentiality of Agreement. The parties hereby acknowledge and agree that this Agreement is confidential. The parties agree not to disclose the existence of this Agreement or its terms to any individual, entity or group of individuals, except for the following: (a) if by President, to President's spouse, President's legal counsel and tax advisors to the extent necessary for purposes of legal or tax advice; a governmental taxing authority if so required; a court of competent jurisdiction if required by subpoena; or as Saint Mary's may agree in writing; or (b) if by Saint Mary's, to legal counsel and tax advisors to the extent necessary for purposes of legal or tax advice; a governmental taxing authority if so required; a court of competent jurisdiction if required by subpoena; or as President may agree in writing. The parties agree to instruct any individuals who are informed of the nature, terms and/or conditions of this Agreement of the confidential nature of the Agreement and to obtain an agreement from such individuals to maintain its confidentiality.

17. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. In addition, any action brought to enforce an arbitration award with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction within the State of Indiana. President hereby consents to the personal jurisdiction of the courts in the State of Indiana.

18. Notices. All notices required or allowed by this Agreement shall be hand delivered or mailed by certified mail, postage prepaid, return receipt requested. Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to Saint Mary's:

Saint Mary's College
Le Mans Hall
Notre Dame, IN 46556
Attn: Chair of the Board of Trustees

If to the President:

Janice Cervelli
Office of the President
Saint Mary's College
Notre Dame, IN 46556

19. Severability. In the event that any provision, term, or restriction of this Agreement shall be held illegal or otherwise unenforceable, such provision, term, or restriction shall be severed, and the balance of the Agreement shall continue in full force and effect.

20. Remedies. In any action brought with respect to this Agreement or the subject matter hereof, the prevailing party shall be entitled to recover its or her costs and expenses, including reasonable attorneys' fees, along with any other damages or relief available at law, in equity, or otherwise.

21. Knowing and Voluntary Execution; Legal Counsel. In executing this Agreement, President acknowledges and agrees that she has entered into this Agreement knowingly and voluntarily and with full knowledge and understanding of the provisions of this Agreement. President further represents that by entering into this Agreement, she is not relying on any statements or representations made by Saint Mary's or any officers, trustees, employees, members or agents of Saint Mary's, which are not incorporated in this Agreement. Rather,

President is relying upon President's own judgment and/or the advice of President's counsel. President further acknowledges that President has had the opportunity to consult with and be advised by President's own legal counsel, or that President has elected not to do so, and that in any event, President has not relied on legal counsel for Saint Mary's in any respect in the review, negotiation, preparation, execution or delivery of this Agreement.

22. Entire Agreement. The parties hereto acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms. This Agreement contains the full, complete, and entire agreement between the parties, superseding any and all other contracts or proposals, oral or written, and any and all other communications between them relating to the subject matter of this Agreement.

23. Amendment. This Agreement cannot be amended or waived in any respect except by a subsequent written agreement entered into by the parties, and only such amendments or waivers that are thus made in writing shall be effective and binding upon the parties hereto.

24. Counterpart Originals. Two or more counterpart originals of this Agreement may be signed by the parties hereto, each of which shall be an original, but all of which together shall constitute one and the same instrument.


25. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors in interest.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Saint Mary's, by its duly authorized officer, and President have caused this Agreement to be executed on the date(s) stated below, effective as of the date first above written.

THE CORPORATION OF
SAINT MARY'S COLLEGE, NOTRE DAME


Janice Cervelli

By: 
Mary L. Burke, Chair
of the Board of Trustees

Date: 2/17/16

Date: 2/17/16

71D05-1903-PL-000074

RESIGNATION OF PRESIDENCY AND AGREEMENT

THIS RESIGNATION OF THE PRESIDENCY AND AGREEMENT (the "Agreement") is entered into as of _____, 2018, by and between THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME ("Saint Mary's") and JANICE CERVELLI ("Ms. Cervelli").

WHEREAS, Ms. Cervelli has served as President of Saint Mary's College pursuant to the terms of her Employment Agreement dated February 17, 2016; and

WHEREAS, the Board of Trustees of Saint Mary's (the "Board") has indicated its interest in terminating her employment as President pursuant to the "not for cause" termination provision set forth in her Employment Agreement (the "Employment Agreement"); and

WHEREAS, Ms. Cervelli has indicated a willingness to resign her position as President in lieu of a not for cause termination and in return for the consideration set forth in this Agreement; and

WHEREAS, this Agreement has been duly approved and its execution duly authorized by the Board of Trustees of Saint Mary's College (the "Board");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the actions taken pursuant thereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Saint Mary's and Ms. Cervelli agree as follows:

1. **Resignation.** Ms. Cervelli hereby resigns her position as President of the College effective December 31, 2018. From the date of this Agreement through December 31, 2018, Ms. Cervelli will continue to be compensated pursuant to the terms of her Employment Agreement, however, she agrees and understands that she is not authorized to contract on behalf of the College, enter into any agreements on behalf of the College, speak on behalf of the College, or actively promote herself as President of the College. During this period, the College will appoint an Interim President to perform the duties of the College President.

2. **Severance and Benefits Related to Presidency.** Under the terms of Paragraph 4(b) of her Employment Agreement, Ms. Cervelli is entitled to certain compensation, retirement contributions and insurances (the "Benefits") in the event the College terminated her employment as President without cause. In addition, Saint Mary's will pay accrued paid time off and accrued vacation benefits. Paragraph 4(c) of her Employment Agreement also provided that these Benefits would not be available to her if she resigned her Presidency. Therefore, the parties have agreed that, effective January 1, 2019, Ms. Cervelli may receive those Benefits even though she has resigned her employment as President in lieu of being terminated without cause. Specifically, Saint Mary's shall pay severance to Ms. Cervelli by continuing monthly salary payments to her at the same monthly salary rate as October 2018, less all applicable withholdings, for a twelve month period beginning January 1, 2019 (the "Severance Period"). During the Severance Period, Saint Mary's also will pay Ms. Cervelli an amount equal to the

contributions that Saint Mary's would have made on her behalf pursuant to Saint Mary's TIAA/CREF retirement plan (with such amount being based upon the amount of the payments made to her under Section 4(b) of the Employment Agreement). In addition, during the Severance Period, Ms. Cervelli shall also be entitled to participate in such medical and disability insurance plans of Saint Mary's upon the same or comparable terms as other employees of Saint Mary's, subject to all eligibility requirements, in the same manner and with the same contributions to cost by Saint Mary's, as she would have been entitled to if she had continued in the role of president.

3. **Tenured Faculty Position.** The parties agree that as of January 1, 2019 Ms. Cervelli shall continue her position as a tenured member of the faculty and she shall be paid in accordance with Section 11 of the Employment Agreement. The parties have indicated a willingness to discuss a possible buyout of Ms. Cervelli's tenured faculty position. The parties have also indicated a willingness to participate in good faith in mediation as provided in Section 14 of the Employment Agreement to address the issue of buying out Ms. Cervelli's tenured faculty position and sabbatical rights.

4. **Consideration.** The parties mutually agree that the promises, actions and agreements contained herein are sufficient consideration for the promises, actions and agreements each make to each other, including but not limited to the Mutual General Releases contained in Paragraphs 5 and 6 of this Agreement.

5. **General Release of Saint Mary's.** In consideration of the benefits provided under this Agreement, Ms. Cervelli, on her behalf and on behalf of her agents, representatives, assigns, heirs, executors and administrators hereby releases and forever discharges Saint Mary's, its officers, trustees, employees, members and agents (collectively the "Released Parties") from any claim, demand, action, or cause of action, known or unknown, arising out of, or in any way connected with her employment as President of Saint Mary's or the termination of such employment, including without limitation any claim, demand, action, cause of action or right, including claims for attorneys' fees based on but not limited to: Age Discrimination in Employment Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; The Americans With Disabilities Act of 1990; The Civil Rights Act of 1866; The Civil Rights Act of 1991, as amended; The Employee Retirement Income Security Act; The Family and Medical Leave Act of 1993; The Indiana Civil Rights Law; any existing or potential entitlement or benefit under any program or plan unless forbidden by the Employee Retirement Income Security Act; any agreement, contract, or representation (whether oral or written) including her Employment Agreement; any other federal, state, or local law whether emanating or arising from statute, executive order, regulation, common law, or other source including all suits in contract or tort, including claims of wrongful termination or breach of contract. This release and waiver shall not apply to any rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any claims relating to the Saint Mary's performance of its obligations under this Agreement.

6. **Release of Ms. Cervelli.** Saint Mary's, on behalf of itself and its affiliates, trustees, officers, directors, employees, agents, representatives, assigns, heirs, executors and administrators, and in full consideration of Ms. Cervelli's execution of this Release, hereby releases and forever discharges Ms. Cervelli, her heirs, executors, administrators, attorneys and

agents from any claim, demand, action, or cause of action, known or unknown, arising out of, or in any way connected with her employment as President of Saint Mary's, or the termination of her employment as President, including without limitation any claim, demand, action, cause of action or right including claims for attorneys' fees, with respect to any claim under federal, state, or local law whether emanating or arising from statute, executive order, regulation, common law, or other source including all suits in contract or tort, including claims of breach of contract, other than any and all claims and/or causes of action based upon gross misconduct, gross negligence, fraud or felonious activity by Employee. This release and waiver shall not apply to any rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any claims relating to the Ms. Cervelli's performance of her obligations under this Agreement.

7. **Covenant Not to Sue by Ms. Cervelli.** Ms. Cervelli further agrees that she will not sue Saint Mary's or any Released Party concerning any claim relating to, arising out of, or occurring during the course of her employment as President of Saint Mary's. Should Ms. Cervelli violate this Covenant Not to Sue by suing Saint Mary's or any Released Party, Ms. Cervelli explicitly agrees to pay all costs and expenses incurred by Saint Mary's and each Released Party in defending against such a suit, including reasonable attorneys' fees. This covenant shall not apply to any suit relating to rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any suit based upon claims relating to the Saint Mary's performance of its obligations under this Agreement.

8. **Review of Counsel.** Ms. Cervelli acknowledges that, prior to executing this Agreement, Saint Mary's advised her in writing to seek independent advice from an attorney of her own selection regarding the terms of this Agreement, and Ms. Cervelli sought such independent advice.

9. **Knowing and Voluntary Execution.** In executing this Agreement, Ms. Cervelli acknowledges and agrees that she has entered into this Agreement knowingly and voluntarily and with full knowledge and understanding of the provisions of this Agreement, including the rights she is waiving under the Age Discrimination in Employment Act, any other federal statute, any state statute or local ordinance, and any common law of the State of Indiana. Ms. Cervelli further represents that by entering into this Agreement, she is not relying on any statements or representations made by Saint Mary's or any Released Party, which are not incorporated in this Agreement; rather, Ms. Cervelli is relying upon her own judgment and/or advice of counsel.

10. **Consideration and Revocation Periods.** Ms. Cervelli acknowledges that she has been advised of her right to consider this Agreement for twenty-one (21) calendar days, but she may execute this Agreement before the 21-day period has elapsed. If Ms. Cervelli executes this Agreement prior to the expiration of the 21-day period, Ms. Cervelli agrees that she has voluntarily waived the balance of the 21-day consideration period provided for in the Older Workers Benefit Protection Act. Ms. Cervelli further acknowledges that she has seven (7) calendar days from the date of execution of this Agreement within which, in writing, to revoke this Agreement (the "Revocation Period") and that all mutual considerations, including all waivers, covenants not to sue and releases, will not be effective until after seven (7) calendar days from the date of execution of this Agreement (the "Effective Date"), provided she has not revoked her consent to this Agreement on or before the Effective Date.

11. **Consequences of Revocation.** Ms. Cervelli understands that if she revokes this Agreement pursuant to Paragraph 10 of this Agreement on or before the Effective Date, this Agreement will become null and void and unenforceable by either Ms. Cervelli or Saint Mary's.

12. **Confidentiality.** The parties hereby acknowledge and agree that this Agreement is confidential. The parties agree not to disclose the existence of this Agreement to any individual, entity or group of individuals, except for the following: Employee's legal counsel and tax advisors to the extent necessary for purposes of legal or tax advice; a governmental taxing authority if so required; a court of competent jurisdiction if required by subpoena; or as Saint Mary's may agree in writing. The parties agree to instruct any individuals whom are informed of the nature, terms and/or conditions of this Agreement of the confidential nature of the agreement and to obtain an agreement from such individuals to maintain their confidentiality.

Moreover, Ms. Cervelli acknowledges that, as a result of her employment as President of Saint Mary's, she was entrusted with information that is sensitive, private, proprietary, and/or confidential. Subsequent to the Effective Date, Ms. Cervelli hereby agrees that she will keep all such information confidential and she will not volunteer or disclose any such information to anyone or use such information herself without first obtaining express authorization to do so from Saint Mary's. For purposes of this Agreement, "proprietary" or "confidential" information would include, but is not limited to (whether written or not), trade secrets (as defined by applicable law), all information about Saint Mary's services and programs, alliances, strategic partners, donors and prospective donors, strategic plans, growth and development strategies, research, operations, financial information, marketing plans, strategic and financial plans, financial reports, revenue information, future business plans, and other business aspects of Saint Mary's which are not generally known to the public ("Confidential Information"). Notwithstanding anything to the contrary in this Agreement, Ms. Cervelli will never disclose or use confidential information which remains a trade secret of Saint Mary's; provided, that under 18 U.S.C. §1833(b), an individual shall not be held liable for disclosure of a trade secret if that disclosure (i) is made in confidence to a federal, state or local government official or to an attorney for the sole purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. §1833(b) or create liability for disclosures of trade secrets expressly allowed by 18 U.S.C. §1833(b). In addition, this paragraph shall not be applicable if and to the extent Ms. Cervelli is required to testify in a legislative, judicial or regulatory proceeding, or before any state or local legislature, a judge, or an administrative law judge, nor is it intended to interfere with any other legal rights of Ms. Cervelli with regard to disclosure of information to a governmental agency.

13. **Non-Disparagement.** Saint Mary's, the Released Parties, and Ms. Cervelli mutually promise and agree that neither will make false, disparaging or uncomplimentary remarks about each other including any of Saint Mary's officers, administrators, trustees, managers, employees or other affiliated persons. The parties further agree that in the event inquiries are made about Ms. Cervelli's resignation both parties agree to say that Ms. Cervelli made the decision to resign her employment as President at Saint Mary's and continue her role as a tenured member of the faculty.

14. **Return of Property.** Ms. Cervelli agrees, to the extent she has not already done so, to return to Saint Mary's on or before the Effective Date of this Agreement all Saint Mary's property, equipment, information and documents relating specifically to the office of the President of the College. Saint Mary's College agrees to return Ms. Cervelli's hardcopy notes, letters addressed to her personally, pictures, her personal documents located on the College's computer, any hardcopy materials relating to her coursework, and similar personal material.

15. **Successors and Assigns.** The terms and conditions of this Agreement shall be binding upon Ms. Cervelli and her heirs, agents, executors, administrators, and shall also inure to their benefit. This Agreement also shall apply to, be binding upon, and inure to the benefit of Saint Mary's, its successors and assigns and each Released Party.

16. **Miscellaneous.**

(a) **Governing Law; Forum.** This Agreement and the obligations of the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Indiana, without regard to principles of conflicts of laws. Each party consents to the exclusive personal jurisdiction of the federal courts located in the Northern District of Indiana or the state courts located in Saint Joseph County, Indiana over any action arising out of or relating to this Agreement and waives any objection it or she may now or hereafter have to venue or to convenience of forum.

(b) **Non-Admission of Wrongdoing.** Ms. Cervelli and Saint Mary's acknowledge that nothing in this Agreement shall be construed as an admission of fault or liability on the part of either party.

(c) **Entire Understanding.** Unless expressly set forth herein, this Agreement sets forth the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings among the parties related to the subject matter hereof and Ms. Cervelli's employment with Saint Mary's as its President and the end of that employment.

(d) **Severable.** The parties agree that the provisions of this Agreement are reasonable and enforceable. If any portion of this Agreement is deemed to be void for any reason that portion of the Agreement is severable and the remaining portions will remain in full force and effect.

MS. CERVELLI HAS BEEN ADVISED THAT SHE HAS AT LEAST TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS AGREEMENT AND HAS BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

MS. CERVELLI AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE DAY CONSIDERATION PERIOD.

Ms. Cervelli's signature below indicates:

- She has read this Agreement;
- She has had the opportunity to review this Agreement with an attorney of her own choosing;
- She agrees to follow the terms of this Agreement; and
- She knowingly and voluntarily waives any and all claims she might have against the Released Parties in accordance with the terms of this Resignation of Presidency and Agreement.

IN WITNESS WHEREOF, Saint Mary's, by its duly authorized officer, and Ms. Cervelli have caused this Agreement to be executed on the date(s) stated below, effective as of the date first above written.

THE CORPORATION OF
 SAINT MARY'S COLLEGE, NOTRE DAME


 Janice Cervelli

By: _____
 Mary L. Burke, Chair
 of the Board of Trustees

Date: 11/15/18

Date: _____

STATE OF INDIANA) ST. JOSEPH COUNTY SUPERIOR COURT
) SS: 71D05-1903-PL-000074
COUNTY OF MARION) CAUSE NO. _____

JANICE CERVELLI,)
)
 Plaintiff,)
)
 v.)
)
 THE CORPORATION OF ST.)
 MARY'S COLLEGE, NOTRE DAME,)
)
 Defendant.)

PLAINTIFF'S COMPLAINT FOR DAMAGES

The Plaintiff, Janice Cervelli, by counsel, for her Complaint for Damages against the Defendant, the Corporation of St. Mary's College, Notre Dame, states as follows:

PARTIES

1. At all times mentioned herein, the Plaintiff, Janice Cervelli ("Cervelli") was a resident of St. Joseph County, Indiana.
2. At all times mentioned herein, the Corporation of St. Mary's College, Notre Dame ("SMC"), was and is a domestic nonprofit corporation formed in the State of Indiana with its principal place of business in St. Joseph County, Indiana.

BACKGROUND AND FACTUAL ALLEGATIONS

3. On February 17, 2016, Cervelli entered into a confidential Employment Agreement with the defendant SMC, pursuant to which she agreed to serve as President of SMC. (A true and accurate copy of the Employment Agreement is

attached to the Verified Written Request to Prohibit Public Access as Ex. 1, filed contemporaneously with this Complaint).

4. Subject to certain termination provisions, the term of Cervelli's employment as President was to commence June 1, 2016 and continue through May 31, 2021.

5. Under Section 4 of the Employment Agreement, Cervelli's employment could be terminated "for cause," "without cause," or by resignation.

6. SMC has not terminated Cervelli's employment "for cause," nor has there ever been any grounds to do so.

7. Section 5 of the Employment Agreement provided for annual reviews of Cervelli's performance by the Chair and Vice-Chair and the Full Board Trustees of SMC. Cervelli had reviews in 2017 and 2018, both of which were favorable.

8. Nevertheless, despite these two favorable reviews and despite a lack of any reason to terminate her for cause, in late September 2018, SMC Board of Trustee Chair Mary Burke asked Cervelli to resign from her position as President.

9. On or about September 30, Burke presented Cervelli with an undated and unsigned separation agreement and stated that the Board was calling for her immediate resignation pursuant to the terms of the proposed agreement. The representation that the Board was interested in terminating Cervelli was not true, or at least not two-thirds of the full Board as required.

10. Burke demanded that Cervelli review and accept the agreement by October 5, when she would announce Cervelli's resignation at a Faculty Assembly Meeting and College Assembly or the Board would terminate her without cause.

11. At the September 30 meeting, Burke instructed Cervelli not to report to work and to tell everyone that she was on sick leave, which was not true. Burke also suggested that Cervelli indicate that she was resigning because her mother needed more care, which was also not true. Cervelli was also told to resign her position as a full tenured professor without cause and without compensation.

12. On October 8, 2018, the Notre Dame and SMC student newspaper ("The Observer") quoted Chair Burke as follows,

However, Burke did address several rumors regarding Cervelli's resignation. *Burke said it was solely Cervelli's decision and not the result of internal pressure to resign.* "There's probably lots of different pieces to it," Burke said. "So, it was her decision, *her decision alone to resign*, and we respect her privacy as to why the reasons were." Burke said while she cannot say with certainty Cervelli did not leave due to health reasons, she appears to be in "good health." "I've spoken with her, she sounds in good health, she says she's in good health, but who knows why?" Burke said. "There's probably a thousand reasons to pull together, and I think we have to respect her privacy on it as well."

13. Similarly, the South Bend Tribune reported on October 9 that Burke said that Cervelli had resigned "*due to reasons she chose not to disclose*" and that "*the board had no issues with Cervelli's performance and didn't influence her decision.*" That is not true.

14. Burke also told the Tribune that "*It came as a surprise*" when "*Cervelli called her last week to convey the news.*" The Tribune further reported that Burke

said she “*asked Cervelli if ‘there was something we could do’ to keep her at the college but her decision to resign was firm.*” Such a phone call never occurred.

15. The truth is, the *only reason* that Cervelli resigned was pressure from Burke (and apparently the other Board members who were in cahoots with her).

16. Cervelli did not resign for health reasons or any other personal reasons. Cervelli loved her job at SMC, she did it well,¹ and she would have preferred to continue as President of SMC.

17. On or about November 15, 2018, Cervelli and SMC entered into a confidential agreement, in which Cervelli resigned from her position as President of SMC effective December 31, 2018. (A true and accurate copy of the resignation agreement is attached to the Verified Written Request to Prohibit Public Access as Ex. 2. (“Settlement Agreement”).

18. As stated in the Settlement Agreement, Cervelli indicated a willingness to resign her position as President “in lieu of a not for cause termination and in return for the consideration set forth in [the] Agreement....”

19. Pursuant to Section 3 of the Agreement, the parties agreed that as of January 1, 2019, Cervelli would “continue her position as a tenured member of the faculty and she shall be paid in accordance with Section 11 of the Employment Agreement.” (Section 3).

¹ For example, in the same Observer article cited above, it also stated that Burke said that “[Cervelli brought in a really good class this year... You know, 406 [students] is a really good entering class. So the budget’s in good shape. Financially, we are in strong shape.” Burke also reportedly stated, “There were no milestones that were not met by President Cervelli.”

20. Section 11 of the Employment Agreement states that she would be paid “in an amount equal to the highest paid professor at Saint Mary’s.”

21. On October 2, 2018, SMC’s Director of Human Resources sent an email to Ms. Cervelli with a “breakdown of the highest and lowest paid Professors by Rank” (hereinafter referred to as the “October 2nd Email”). In entering into the Settlement Agreement, Cervelli relied on the reported salary of the highest paid professor.

22. In the Settlement Agreement, SMC also agreed to pay Cervelli certain severance pay and benefits for twelve months, beginning January 1, 2019.

23. Specifically, on or about February 1, 2019 and March 1, 2019, Ms. Cervelli should have been paid monthly gross wages in the same amount paid to the highest paid professor (as reflected in the October 2nd Email) as her wages for the months of January and February 2019, respectively.

24. SMC has not paid Ms. Cervelli her salary for her services as a tenured member of the faculty for those months.

25. In addition, SMC has refused to recognize Cervelli’s status as a tenured faculty member.

26. SMC has conducted searches and hires of visiting and junior faculty in Art and Environmental Studies, superseding its obligation to Cervelli as a sitting tenured Full Professor.

27. SMC has obstructed Cervelli’s ability to fulfill her responsibilities as a faculty member and to prepare and receive guidance on course development, course proposals, and other academic policy by:

- a. Failing to identify faculty assignments for Cervelli in teaching, research, or service.
- b. Failing to provide her with an office.
- c. Banning Cervelli's attendance at Faculty Development Day, Department of Art Faculty Meetings, and any other meetings of the college, accompanied by threats of action if disregarded.
- d. Canceling and postponing meetings with the Department Chair of Art and Environmental Studies Program to review course proposal and Disciplinary Standing materials prior to stated deadlines and limiting her ability to respond to requirements.
- e. Requiring all Cervelli correspondence to go through Interim-Provost, causing unnecessary delay and additional work.
- f. Excluding her from the College faculty roster.
- g. Removing Cervelli from the FAC-STAFF list serve of the college, thus banning her from receiving emails containing important announcements regarding college policies, events, and faculty development opportunities.
- h. Blocking Cervelli from Faculty link and Registrar page of the SMC intranet portal, and thus access to essential information on academic policy and faculty support services.
- i. Directing SMC staff (HR Director and CIO) not to respond to Cervelli's repeated requests for meetings, information, and support to which she is entitled as an employee and tenured faculty member.
- j. Monitoring of Cervelli's movements and statements on campus.

COUNT I DECLARATION OF RIGHTS AND INJUNCTION

28. Cervelli incorporates by reference each and every one of the paragraphs above.

29. While Section 7 of the Settlement Agreement contained a covenant not to sue, claims for breach of the Settlement Agreement and claims arising after the

effective date of the Settlement Agreement were specifically excepted from the covenant not to sue.

30. A justiciable controversy has arisen between Ms. Cervelli and St. Mary's regarding their rights and obligations under the Settlement Agreement between them, including a) Ms. Cervelli's status as a tenured faculty member; b) Ms. Cervelli's right to receive compensation and employment benefits as a tenured faculty member; c) Ms. Cervelli's right to reinstatement to the faculty; and d) Ms. Cervelli's right to continuing severance payments under the Settlement Agreement.

31. Ms. Cervelli requests a "speedy hearing" on the declaration of rights and obligations, which the Court may grant under Ind. Trial Rule 57.

32. Ms. Cervelli seeks a declaration that:

- She is entitled to tenure, all compensation and employment benefits (including accrued leave) as a tenured faculty member;
- She is entitled to an injunction reinstating her to the St. Mary's faculty and continued employment until her resignation or retirement;
- She is entitled to all unpaid compensation and employment benefits and prejudgment interest from the date of St. Mary's breach of contract.
- She is entitled to continued severance payments under the Settlement Agreement.
- She will receive such other just relief as determined by the Court.

COUNT II – BREACH OF CONTRACT

33. Cervelli incorporates by reference each and every one of the paragraphs above.

34. SMC has breached the Settlement Agreement by failing to pay Cervelli the amount of money she was entitled to be paid as a tenured member of the faculty for the months of January and February 2019.

35. In addition, SMC has breached the Settlement Agreement by refusing to recognize Cervelli's status as a tenured faculty member as outlined above.

COUNT III BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

36. Cervelli incorporates by reference each and every one of the paragraphs above.

37. There is a legal duty implied in the Employment Agreement and the Settlement Agreement that the employer (SMC) will act in good faith with its employee (Cervelli).

38. SMC has breached its duty of good faith and fair dealing in refusing to pay Cervelli her salary as a tenured professor, refusing to recognize Cervelli's status as a tenured faculty member, and in obstructing Cervelli's ability to fulfill her responsibilities as a tenured faculty member as outlined above.

39. In addition, SMC has breached its duty of good faith in attempting to prevent Ms. Cervelli from disclosing that she is a tenured member of the faculty and by trying to shield this fact from the community and the public.

40. SMC has attempted to use the confidentiality agreement as a sword to prevent Cervelli from telling others that she is a tenured full professor and faculty member. As a result, the students, faculty, and other members of the Saint Mary's College community are confused and left in the dark about Cervelli's status.

41. SMC has also effectively prevented Cervelli from correcting the prior misrepresentations made by Chair Burke to the public.

42. As a result of SMC's breach, Cervelli has suffered both economic and emotional harm. She has effectively lost her job at SMC as well as her livelihood. She has also suffered emotional distress.

**COUNT IV – VIOLATION OF INDIANA'S WAGE PAYMENT STATUTE
[I.C. § 22-2-5-1 AND I.C. § 22-2-5-2]**

43. Cervelli incorporates by reference each and every of the paragraphs above.

44. The amounts that Cervelli was entitled to be paid as a tenured member of the faculty, but which have never been paid, as described above, constitute unpaid "wages" and "an amount due" to her from SMC as those terms are used in I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

45. On January 31, 2019, Cervelli's counsel sent a certified letter to SMC demanding payment of Cervelli's unpaid wages.

46. To date, SMC has not paid Cervelli the unpaid wages to which she is entitled, including wages for the months of January and February at the amount equivalent to that paid to the highest paid professor.

47. SMC has not acted in good faith in refusing to pay the wages owed to Cervelli. SMC has no reasonable basis to deny her the amounts owed.

48. By failing to pay Cervelli the correct sums to which she was rightfully entitled to be compensated for the work that she performed for SMC during January

and February within ten (10) days of the letter demanding payment of same, the Defendant SMC has violated I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Janice Cervelli prays for a judgment against SMC including:

1. Reinstatement to the position of tenured professor (with all the rights and privileges of that position) until resignation or retirement or, in the alternative, an amount sufficient to compensate her for buying out her tenure;
2. An award of economic and compensatory damages, prejudgment interest, and costs;
3. With respect to Count IV, an amount equal to the amount of unpaid wages, plus an additional 10% of these amounts for each day that these amounts remain unpaid, not to exceed a total of double the amount that is due and owing to her; for the costs of this action; for reasonable attorney fees; for all other reasonable costs of collection;
4. A declaration of Ms. Cervelli's rights and SMC's obligations.
5. All other just and proper relief in the premises.

JURY DEMAND

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

/s/ Carol Nemeth Joven

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